SEPARATE STATEMENT OF UNDISPUTED FACTS

Defendant/Counterclaimant HYPHY MUSIC INC. ("Hyphy") hereby submits the following Separate Statement of Undisputed Facts together with references to supporting evidence, pursuant to Federal Rules of Civil Procedure ("FRCP") and Local Rule 260 of the Eastern District of California in support of its Motion for Summary Judgment, or, in the alternative, summary adjudication (the "Motion") (a) as to the Complaint filed by Plaintiff YELLOWCAKE, INC. ("Yellowcake") against Hyphy, in its entirety, and (b) in Hyphy's favor as to its Second and Sixth Claims for Relief set forth in its Amended Counterclaim filed against Counter-Defendants Yellowcake, JOSE DAVID HERNANDEZ ("Hernandez"), and COLONIZE MEDIA, INC. ("Colonize") (collectively "Cross-Defendants").

I. THE COMPLAINT MUST BE DISMISSED

A. <u>Yellowcake's First Claim For Copyright Infringement Fails</u> <u>Because Yellowcake Does Not Have Standing to Sue Hyphy</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
1. Defendant/Counterclaimant	
HYPHY MUSIC, INC. ("Hyphy")	
is a record label in the business of	
collaborating with recording artists	
to produce, distribute, and otherwise	
exploit sound and audiovisual	
recordings, coupled with artwork.	
Declaration of John Begakis (" <i>Begakis Decl.</i> ") at ¶ 8, Exhibit "G" thereto, Jose Martinez Deposition Transcript (" <i>Martinez Depo</i> ") at 13:6-14:6.	
2. Counter-Defendant JESUS	
CHAVEZ, SR ("Chavez") is the	
lead singer of the Spanish-language	
musical group Los Originales De	
San Juan (the " <i>Group</i> ").	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Begakis Decl. at ¶ 13, Exhibit "L"	
	thereto, Jesus Chavez, Sr. Deposition,	
4	Volume I (" <i>Chavez Depo I</i> ") at 25:13-	
5	14; Begakis Decl. at ¶ 14, Exhibit "M"	
6	thereto, Jesus Chavez, Sr. Deposition, Volume II (" <i>Chavez Depo II</i> ") at	
	16:22-17:5.	
7	3. The Group operates as a co-equal	
8	partnership comprised of Chavez	
9	and fellow band members Domingo	
	Torres Flores (" <i>Flores</i> "), who plays	
10	the accordion, and Alfonso Vargas	
11	("Vargas"), who plays the drums.	
12	Begakis Decl. at ¶ 13, Exhibit "L"	
	thereto, Chavez Depo I at 18:16-19:3,	
13	20:8-16, 21:16-19; Begakis Decl. at ¶	
14	11, Exhibit "J" thereto, Deposition	
15	Transcript of Alfonso Vargas ("Vargas	
	Depo ") at 17:16-19, 27:17-22, 143:14-	
16	16; Begakis Decl. at ¶ 12, Exhibit "K"	
17	thereto, Deposition Transcript of	
18	Domingo Torres Flores (" <i>Flores Depo</i> ") at 47:15-25, 48:19-23.	
	4. In or about February 2013, Hyphy	
19	and the Group began working	
20	together to co-create various sound	
21	recordings to be embodied on	
	multiple albums, which they orally	
22	agreed were to be owned by Hyphy	
23	(the "Agreement").	
24	Declaration of Jose Martinez	
	("Martinez Decl.") at ¶ 3; Decl. at ¶ 13,	
25	Exhibit "L" thereto, Chavez Depo I at	
26	34:7-11; Decl. at ¶ 14, Exhibit "M"	
27	thereto, Chavez Depo II at 19:14-17,	
	32:16-20, 35:12-21.	
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	5. The albums created pursuant to the	
	Agreement were entitled (1)	
4	"Amigos y Contrarios"; (2) "Corridos de Poca M"; (3) "El	
5	Campesino"; (4) "Desde La Cantina	
6	de Mi Barrio (En Vivo)"; and (5)	
7	"Nuestra Historia (En Vivo)" (collectively, the " <i>Los Originales</i>	
8	Albums" or "Albums").	
9	·	
10	Martinez Decl. at ¶ 4; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo at 44:7-23, 51:22-25.	
11	6. One of the other two albums	
12	identified in Yellowcake's	
13	Complaint, entitled "Chuy Chavez y Sus Amigos," has no connection to	
14	this dispute and wasn't even	
15	recorded by Chavez.	
16	Martinez Decl. at ¶ 4; Begakis Decl. at	
17	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 44:24:-9, 154:11-155:25.	
18	7. Though this Agreement was not	
19	initially memorialized in writing, Flores and Vargas understood that	
20	such Agreement existed.	
21	Marking Dark (#5 D. 1. C.)	
22	Martinez Decl. at ¶ 5. Declaration of Domingo Torres Flores (" <i>Flores</i> "	
23	Decl. ") at ¶ 3; Declaration of Alfonso	
24	Vargas ("Vargas Decl.") at ¶ 3.	
	8. Flores and Vargas, as co-equal members of the Group, also	
25	intended that all rights in and to	
26	their recording services rendered	
27	pursuant to the Agreement be	
28	conveyed Hyphy.	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 4. Flores Decl. at ¶¶	
4	3-5; Vargas Decl. at ¶¶ 3-5.	
5	9. Flores and Vargas also later	
6	confirmed their belief and intent to convey all rights to Hyphy by	
	executing enforceable Copyright	
7	Assignment Agreements on or about	
8	March 22, 2022 (collectively, the	
9	"Assignments").	
10	Martinez Decl. at ¶ 5, Exhibit "A"	
11	thereto.	
12	10. It should be noted here that Flores	
12	and Vargas were plainly joint	
13	authors of the Albums, including based on the fact that Flores and	
14	Vargas were equally involved in all	
15	activities of the Band, which existed	
	as an unincorporated partnership in	
16	which all Band members were joint	
17	owners, participants and	
18	contributors.	
	Begakis Decl. at ¶ 13, Exhibit "L"	
19	thereto, Chavez Depo I at 18:23-19:3;	
20	Begakis Decl. at ¶ 11, Exhibit "J"	
21	thereto, Vargas Depo at 27:17-22,	
	143:7-10, 143:14-16, 143:17-20,	
22	143:25-144:3, 144:4-7; Begakis Decl. at	
23	¶ 12, Exhibit "K" thereto, Flores Depo	
24	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	
25	11. It should be noted here that Flores	
۵	and Vargas were plainly joint	
26	authors of the Albums, including	
27	based on the fact that Flores and	
28	Vargas were equally credited on all	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Albums in which each of them	
	made contributions.	
4	See Begakis Decl. at ¶ 11, Exhibit "J"	
5	thereto, Vargas Depo at 27:17-22,	
6	143:7-10, 143:14-16, 143:17-20,	
7	143:25-144:3, 144:4-7; Begakis Decl. at	
,	¶ 12, Exhibit "K" thereto, Flores Depo	
8	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	
9	12. It should be noted here that Flores	
10	and Vargas were plainly joint	
11	authors of the Albums, including	
	based on the fact that Flores and	
12	Vargas shared equally in all profits of the Band, and were granted equal	
13	access to inspect all records related	
14	to the Band's receipt of all such	
15	profits.	
16	Begakis Decl. at ¶ 14, Exhibit "M"	
17	thereto, Chavez Depo II at 20:20-21:16,	
1 /	26:13-20, 31:8-16, 33:18-34:1, 38:8-18,	
18	41:13-42:2; Begakis Decl. at ¶ 11,	
19	Exhibit "J" thereto, Vargas Depo at	
20	27:17-22, 143:7-10, 143:14-16, 143:17- 20, 143:25-144:3, 144:4-7; Begakis	
21	Decl. at ¶ 12, Exhibit "K" thereto,	
	Flores Depo at 47:15-25, 82:13-15,	
22	82:22-83:2, 83:4-13, 85:25-86:11,	
23	86:13-21.	
24	13. Yellowcake is a competing record label and distributor of sound	
25	recordings, utilizing Colonize as its	
	"distribution arm" to release and	
26	exploit rights that Yellowcake	
27	acquires.	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Begakis Decl. at ¶ 9, Exhibit "H"	
3	thereto, Deposition Transcript of Kevin	
4	Berger (" <i>Berger Depo</i> ") at 91:19-23;	
5	Begakis Decl. at ¶ 10, Exhibit "I"	
	thereto, Deposition Transcript of Jose	
6	David Hernandez, Volume I	
7	(" <i>Hernandez Depo I</i> ") at 77:19-21. 14. Hernandez is a co-owner of both	
8	Yellowcake and Colonize.	
	Tenoweake and Colomize.	
9	Begakis Decl. at ¶ 10, Exhibit "I"	
10	thereto, Hernandez Depo I at 51:9-11,	
11	116:18-117:14.	
	15. In his position as co-owner of both	
12	Yellowcake and Colonize,	
13	Hernandez has admitted that both	
14	entities have operated – and continue to operate – as one single	
	economic entity, with common	
15	ownership, common business	
16	operations, common office space,	
17	common staff, and many other	
	common resources.	
18		
19	Begakis Decl. at ¶ 10, Exhibit "I"	
20	thereto, Hernandez Depo I at 80:3-20.	
	16. In or about March 2019, Hernandez approached Chavez about selling	
21	the Los Originales Albums to	
22	Yellowcake.	
23		
	Begakis Decl. at ¶ 14, Exhibit "M"	
24	thereto, Chavez Depo II at 77:13-17,	
25	79:7-9, 79:17-80:2, 81:7-16; Begakis	
26	Decl. at ¶ 10, Exhibit "I" thereto,	
	Hernandez Depo I at 148:24-149:5.	
27	17. Hernandez had previously worked	
28	with Hyphy and had secretly gained	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	valuable information on Hyphy's	
	business and relationship with	
4	Chavez. Hernandez therefor knew that Hyphy only had an oral	
5	agreement with the Group.	
6		
7	Martinez Decl. at ¶ 3; Begakis Decl. at	
8	¶ 8, Exhibit "G" thereto, Martinez Depo at 26:2-12.	
	18. Hernandez approached and	
9	convinced Chavez, without Hyphy	
10	or the rest of the Group's	
11	knowledge, to assign the Albums to	
12	Yellowcake in exchange for payment of \$500,000.	
13	payment of \$500,000.	
	Begakis Decl. at ¶ 14, Exhibit "M"	
14	thereto, Chavez Depo II at 77:13-17,	
15	79:7-9, 79:17-80:2, 80:5-13, 81:7-16; Begakis Decl. at ¶ 10, Exhibit "I"	
16	thereto, Hernandez Depo I at 107:4-20.	
17	19. Chavez and Yellowcake codified	
	their purported agreement via an	
18	"Asset Purchase and Assignment Agreement" executed on or about	
19	March 21, 2019 (the "Asset	
20	Purchase Agreement").	
21		
22	Begakis Decl. at ¶ 7, Exhibit "F" thereto, Plaintiff/Counterdefendant's	
23	Document Production (PLF000021-	
	PLF000039).	
24	20. In Section 13.e. of the Asset	
25	Purchase Agreement, Chavez	
26	represented and warranted to Yellowcake that Chavez was "the	
27	only owner of" the Albums, and	
28	possessed "good and marketable	
40		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	title" thereto at the time of sale.	
4	Begakis Decl. at ¶ 7, Exhibit "F"	
5	thereto, Plaintiff/Counterdefendant's Document Production (PLF00024).	
6	21. Chavez, however, never obtained	
7	signed written agreements from Flores, Vargas or Hyphy acquiring	
8	each party's respective	
9	contributions to, and rights in, the Albums and sound recordings	
10	embodied thereon.	
11	Begakis Decl. at ¶ 6, Exhibit "E"	
12	thereto, Yellowcake Interrogatory	
13	Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit "F" thereto, Yellowcake	
14	Responses to Request for Production at	
15	p. 4.	

B. <u>Yellowcake's First Claim for Copyright Infringement Fails</u> <u>Because Hyphy Is A Joint Owner In The Albums</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
22. Defendant/Counterclaimant HYPHY MUSIC, INC. ("Hyphy") is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings, coupled with artwork.	
Declaration of John Begakis ("Begakis	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Decl. ") at ¶ 8, Exhibit "G" thereto, Jose	
3	Martinez Deposition Transcript	
4	(" <i>Martinez Depo</i> ") at 13:6-14:6.	
5	23. Counter-Defendant JESUS	
	CHAVEZ, SR (" <i>Chavez</i> ") is the	
6	lead singer of the Spanish-language	
7	musical group Los Originales De San Juan (the " <i>Group</i> ").	
8	San Juan (the Group).	
9	Begakis Decl. at ¶ 13, Exhibit "L"	
9	thereto, Jesus Chavez, Sr. Deposition,	
10	Volume I (" <i>Chavez Depo I</i> ") at 25:13-	
11	14; Begakis Decl. at ¶ 14, Exhibit "M"	
	thereto, Jesus Chavez, Sr. Deposition,	
12	Volume II ("Chavez Depo II") at	
13	16:22-17:5.	
14	24. The Group operates as a co-equal partnership comprised of Chavez	
	and fellow band members Domingo	
15	Torres Flores (" <i>Flores</i> "), who plays	
16	the accordion, and Alfonso Vargas	
17	("Vargas"), who plays the drums.	
18	Begakis Decl. at ¶ 13, Exhibit "L"	
19	thereto, Chavez Depo I at 18:16-19:3,	
20	20:8-16, 21:16-19; Begakis Decl. at ¶	
	11, Exhibit "J" thereto, Deposition Transcript of Alfonso Vargas ("Vargas	
21	Depo ") at 17:16-19; 27:17-22; 143:14-	
22	16; Begakis Decl. at ¶ 12, Exhibit "K"	
23	thereto, Deposition Transcript of	
	Domingo Torres Flores ("Flores	
24	Depo ") at 47:15-25, 48:19-23.	
25	25. In or about February 2013, Hyphy	
26	and the Group began working	
	together to co-create various sound	
27	recordings to be embodied on	
28	multiple albums, which they orally	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	agreed were to be owned by Hyphy (the "Agreement").	
4		
5	Declaration of Jose Martinez	
6	(" <i>Martinez Decl.</i> ") at ¶ 3; Begakis Decl. at ¶ 13, Exhibit "L" thereto,	
	Chavez Depo I at 34:7-11; Begakis	
7	Decl. at ¶ 14, Exhibit "M" thereto,	
8	Chavez Depo II at 19:14-17, 32:16-20,	
9	35:12-21.	
	26. The albums created pursuant to the	
10	Agreement were entitled (1) "Amigos y Contrarios"; (2)	
11	"Corridos de Poca M"; (3) "El	
12	Campesino"; (4) "Desde La Cantina	
13	de Mi Barrio (En Vivo)"; and (5)	
	"Nuestra Historia (En Vivo)"	
14	(collectively, the "Los Originales	
15	Albums" or "Albums").	
16	Martinez Decl. at ¶ 4; Begakis Decl. at	
17	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 44:7-23, 51:22-25.	
18	27. One of the other two albums	
19	identified in Yellowcake's	
20	Complaint, entitled "Chuy Chavez y	
	Sus Amigos," has no connection to this dispute and wasn't even	
21	recorded by Chavez.	
22	M (D 1 (MAD 1) D 1	
23	Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
24	at 44:24:-9, 154:11-155:25.	
25	28. Unlike larger record labels,	
	however, Hyphy closely	
26	collaborated with the Group to	
27	create the Albums.	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 6; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo	
4	at 75:6-76:25, 83:11-84:22, 84:24-85:8,	
5	85:14-86:16. 29. For the first three (of five) of the	
6	Los Originales Albums, Hyphy	
7	helped determine the "theme" and	
	overall creative direction of each	
8	Album.	
9	Martinez Decl. at ¶ 6.	
10	30. For the first three (of five) of the	
11	Los Originales Albums, Hyphy	
12	selected the songs to be included in	
	each Album.	
13	Martinez Decl. at ¶ 6; Begakis Decl. at	
14	¶ 8, Exhibit "G" thereto, Martinez Depo	
15	at 83:11-84:22.	
16	31. For the first three (of five) of the	
	Los Originales Albums, Hyphy selected the recording studio, and	
17	paid for all costs associated with the	
18	recording of each Album.	
19		
20	Martinez Decl. at ¶ 6.	
	32. For the first three (of five) of the Los Originales Albums, Hyphy	
21	hired the sound engineer.	
22	_	
23	Martinez Decl. at ¶ 6; Begakis Decl. at	
24	¶ 8, Exhibit "G" thereto, Martinez Depo at 59:21-60:7, 61:10-16.	
25	33. For the first three (of five) of the	
	Los Originales Albums, Hyphy paid	
26	the Group a substantial amount for	
27	recording the Albums.	
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 6.	
	34. And for the first three (of five) of	
4	the Los Originales Albums, Hyphy oversaw and generally supervised	
5	the recording and production of	
6	each Album.	
7		
8	Martinez Decl. at ¶ 6; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo at 85:14-86:16.	
9	35. For the final two (of five) Albums	
10	(which are comprised of recordings	
11	from a previous live performance by	
12	the Group), Hyphy also selected and paid for the venue of the live	
	performance.	
13	1	
14	Martinez Decl. at ¶ 6; Begakis Decl. at	
15	¶ 8, Exhibit "G" thereto, Martinez Depo	
16	at 75:6-25. 36. For the final two (of five) Albums	
17	(which are comprised of recordings	
	from a previous live performance by	
18	the Group), Hyphy also selected the	
19	songs to be performed at the live performance and recorded for the	
20	Albums.	
21		
22	Martinez Decl. at ¶ 6; Begakis Decl. at	
23	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
	37. For the final two (of five) Albums	
24	(which are comprised of recordings	
25	from a previous live performance by	
26	the Group), Hyphy also directly employed, supervised, and directed	
27	the services of the sound engineer	
	and videographer who each	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	recorded the audio and video of the	
	live performance, respectively.	
4	Martinez Deal at ¶ 6. Decelia Deal at	
5	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
6	at 75:6-25.	
7	38. For the final two (of five) Albums	
	(which are comprised of recordings	
8	from a previous live performance by	
9	the Group), Hyphy also wrote a	
10	script for the history of the band as presented at the live performance,	
	and hired a "MC"/commentator who	
11	narrated the script.	
12		
13	Martinez Decl. at ¶ 6; Begakis Decl. at	
14	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
	39. For the final two (of five) Albums	
15	(which are comprised of recordings	
16	from a previous live performance by	
17	the Group), Hyphy also re-recorded	
18	whole portions of the guitarist's contributions to the live	
	performance afterwards, using a	
19	new guitarist selected, hired and	
20	paid for by Hyphy.	
21	Marting Deal -4 (C.D. 1' D. 1)	
22	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
23	at 75:6-25.	
	40. In addition to its original creative	
24	contributions to the production,	
25	recording and overall creation of the	
26	Los Originales Albums, Hyphy also designed and created the artwork	
	featured on the cover of each Album	
27	(the "Album Artwork").	
28	/	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 7; Begakis Decl. at	
4	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 127:12-21.	
5	41. Yellowcake is a competing record	
6	label and distributor of sound	
7	recordings, utilizing Colonize as its	
8	"distribution arm" to release and	
	exploit rights that Yellowcake acquires.	
9	acquires.	
10	Begakis Decl. at ¶ 9, Exhibit "H"	
11	thereto, Deposition Transcript of Kevin	
	Berger ("Berger Depo") at 91:19-23;	
12	Begakis Decl. at ¶ 10, Exhibit "I"	
13	thereto, Deposition Transcript of Jose David Hernandez, Volume I	
14	("Hernandez Depo I") at 77:19-21.	
15	42. Hernandez is a co-owner of both	
	Yellowcake and Colonize.	
16		
17	Begakis Decl. at ¶ 10, Exhibit "I"	
18	thereto, Hernandez Depo I at 51:9-11, 116:18-117:14.	
	43. In his position as co-owner of both	
19	Yellowcake and Colonize,	
20	Hernandez has admitted that both	
21	entities have operated – and	
22	continue to operate – as one single	
	economic entity, with common	
23	ownership, common business operations, common office space,	
24	common staff, and many other	
25	common resources.	
26	Begakis Decl. at ¶ 10, Exhibit "I"	
27	thereto, Hernandez Depo I at 80:3-20.	
28	44. In or about March 2019, Hernandez	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	approached Chavez about selling	
	the Los Originales Albums to Yellowcake.	
4	r enowcake.	
5	Begakis Decl. at ¶ 14, Exhibit "M"	
6	thereto, Chavez Depo II at 77:13-17,	
7	79:7-9, 79:17-80:2, 81:7-16; Begakis Decl. at ¶ 10, Exhibit "I" thereto,	
8	Hernandez Depo I at 148:24-149:5.	
9	45. Hernandez had previously worked	
	with Hyphy and had secretly gained	
10	valuable information on Hyphy's	
11	business and relationship with Chavez. Hernandez therefor knew	
12	that Hyphy only had an oral	
13	agreement with the Group.	
14	Marting Deal at #2, Decalis Deal at	
	Martinez Decl. at ¶ 3; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
15	at 26:2-12.	
16	46. Hernandez approached and	
17	convinced Chavez, without Hyphy	
18	or the rest of the Group's knowledge, to assign the Albums to	
19	Yellowcake in exchange for	
	payment of \$500,000.	
20	Deceles Deal at ¶ 14 Eylibit "M"?	
21	Begakis Decl. at ¶ 14, Exhibit "M" thereto, Chavez Depo II at 77:13-17,	
22	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	
23	Begakis Decl. at ¶ 10, Exhibit "I"	
24	thereto, Hernandez Depo I at 107:4-20. 47. Chavez and Yellowcake codified	
25	their purported agreement via an	
	"Asset Purchase and Assignment	
26	Agreement" executed on or about	
27	March 21, 2019 (the "Asset	
28	Purchase Agreement").	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Begakis Decl. at ¶ 7, Exhibit "F"	
4	thereto, Plaintiff/Counterdefendant's	
5	Document Production (PLF000021-PLF000039).	
6	48. Chavez may have been the lead	
7	singer, but the instrumentation of the recordings is a major factor in	
8	their appeal, as Hyphy has	
9	confirmed.	
10	Martinez Decl. at ¶ 3; Begakis Decl. at	
11	¶ 8, Exhibit "G" thereto, Martinez Depo. at 111:24-112:3.	
12		

C. <u>Yellowcake's First Claim For Copyright Infringement Fails</u> <u>Because Yellowcake Has No Provable Damages</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
49.Defendant/Counterclaimant HYPHY	
MUSIC, INC. (" <i>Hyphy</i> ") is a record	
label in the business of collaborating	
with recording artists to produce,	
distribute, and otherwise exploit	
sound and audiovisual recordings,	
coupled with artwork.	
Declaration of John Begakis (" <i>Begakis</i>	
Decl. ") at ¶ 8, Exhibit "G" thereto, Jose	
Martinez Deposition Transcript	
(" <i>Martinez Depo</i> ") at 13:6-14:6.	
50.Counter-Defendant JESUS	
CHAVEZ, SR (" <i>Chavez</i> ") is the lead	
singer of the Spanish-language	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	musical group Los Originales De	
4	San Juan (the " <i>Group</i> ").	
	Begakis Decl. at ¶ 13, Exhibit "L"	
5	thereto, Jesus Chavez, Sr. Deposition,	
6	Volume I (" <i>Chavez Depo I</i> ") at 25:13-	
7	14; Begakis Decl. at ¶ 14, Exhibit "M" thereto, Jesus Chavez, Sr. Deposition,	
8	Volume II (" <i>Chavez Depo II</i> ") at	
9	16:22-17:5.	
	51. The Group operates as a co-equal	
10	partnership comprised of Chavez and fellow band members Domingo	
11	Torres Flores (" <i>Flores</i> "), who plays	
12	the accordion, and Alfonso Vargas	
13	("Vargas"), who plays the drums.	
14	Begakis Decl. at ¶ 13, Exhibit "L"	
15	thereto, Chavez Depo I at 18:16-19:3,	
	20:8-16, 21:16-19; Begakis Decl. at ¶	
16	11, Exhibit "J" thereto, Deposition	
17	Transcript of Alfonso Vargas (" <i>Vargas</i> <i>Depo</i> ") at 17:16-19; 27:17-22; 143:14-	
18	16; Begakis Decl. at ¶ 12, Exhibit "K"	
19	thereto, Deposition Transcript of	
20	Domingo Torres Flores ("Flores	
	Depo ") at 47:15-25, 48:19-23. 52.In or about February 2013, Hyphy	
21	and the Group began working	
22	together to co-create various sound	
23	recordings to be embodied on multiple albums, which they orally	
24	agreed were to be owned by Hyphy	
25	(the "Agreement").	
26	Declaration of Jose Martinez	
27	("Martinez Decl.") at ¶ 3; Decl. at ¶ 13,	
28	Exhibit "L" thereto, Chavez Depo I at	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	34:7-11; Decl. at ¶ 14, Exhibit "M"	
3	thereto, Chavez Depo II at 19:14-17,	
4	32:16-20, 35:12-21.	
5	53. The albums created pursuant to the	
	Agreement were entitled (1)	
6	"Amigos y Contrarios"; (2) "Corridos de Poca M"; (3) "El	
7	Campesino"; (4) "Desde La Cantina	
8	de Mi Barrio (En Vivo)"; and (5)	
	"Nuestra Historia (En Vivo)"	
9	(collectively, the "Los Originales	
10	Albums" or "Albums").	
11		
	Martinez Decl. at ¶ 4; Begakis Decl. at	
12	¶ 8, Exhibit "G" thereto, Martinez Depo	
13	at 44:7-23, 51:22-25.	
14	54.One of the other two albums identified in Yellowcake's	
	Complaint, entitled "Chuy Chavez y	
15	Sus Amigos," has no connection to	
16	this dispute and wasn't even	
17	recorded by Chavez.	
18	Martinez Decl. at ¶ 4; Begakis Decl. at	
19	¶ 8, Exhibit "G" thereto, Martinez Depo	
20	at 44:24:-9, 154:11-155:25.	
	55. Though this Agreement was not	
21	initially memorialized in writing, Flores and Vargas understood that	
22	such Agreement existed.	
23	such rigicoment existed.	
	Martinez Decl. at ¶ 5. Declaration of	
24	Domingo Torres Flores ("Flores	
25	Decl. ") at ¶ 3; Declaration of Alfonso	
26	Vargas ("Vargas Decl.") at ¶ 3.	
	56. Flores and Vargas, as co-equal	
27	members of the Group, also intended	
28	that all rights in and to their	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	recording services rendered pursuant	
	to the Agreement be conveyed	
4	Hyphy.	
5	Martinez Decl. at ¶ 4. Flores Decl. at ¶¶	
6	3-5; Vargas Decl. at ¶¶ 3-5.	
7	57. Flores and Vargas also later confirmed their belief and intent to	
8	convey all rights to Hyphy by	
9	executing enforceable Copyright	
	Assignment Agreements on or about	
10	March 22, 2022 (collectively, the "Assignments").	
11	215Sigiments).	
12	Martinez Decl. at ¶ 5, Exhibit "A"	
13	thereto.	
14	58.Unlike larger record labels, however, Hyphy closely collaborated with the	
15	Group to create the Albums.	
16	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
17	at 75:6-76:25, 83:11-84:22, 84:24-85:8,	
18	85:14-86:16.	
19	59. For the first three (of five) of the	
20	Los Originales Albums, Hyphy helped determine the "theme" and	
21	overall creative direction of each	
	Album.	
22	Martinez Deal at ¶ 6	
23	Martinez Decl. at ¶ 6. 60. For the first three (of five) of the	
24	Los Originales Albums, Hyphy	
25	selected the songs to be included in	
26	each Album.	
27	Martinez Decl. at ¶ 6; Begakis Decl. at	
28	¶ 8, Exhibit "G" thereto, Martinez Depo	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	at 83:11-84:22.	
4	61. For the first three (of five) of the	
	Los Originales Albums, Hyphy selected the recording studio, and	
5	paid for all costs associated with	
6	the recording of each Album.	
7	Martinez Decl. at ¶ 6.	
8	62. For the first three (of five) of the	
9	Los Originales Albums, Hyphy	
10	hired the sound engineer.	
11	Martinez Decl. at ¶ 6; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo	
12	at 59:21-60:7, 61:10-16. 63. For the first three (of five) of the	
13	Los Originales Albums, Hyphy	
14	paid the Group a substantial	
15	amount for recording the Albums.	
16	Martinez Decl. at ¶ 6.	
17	64. And for the first three (of five) of	
18	the Los Originales Albums, Hyphy oversaw and generally supervised	
19	the recording and production of	
	each Album.	
20	Martinez Decl. at ¶ 6; Begakis Decl. at	
21	¶ 8, Exhibit "G" thereto, Martinez Depo	
22	at 85:14-86:16.	
23	65. For the final two (of five) Albums	
24	(which are comprised of recordings from a previous live performance	
25	by the Group), Hyphy also selected	
26	and paid for the venue of the live	
27	performance.	
	Martinez Decl. at ¶ 6; Begakis Decl. at	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
4	66. For the final two (of five) Albums	
5	(which are comprised of recordings from a previous live performance	
6	by the Group), Hyphy also selected	
7	the songs to be performed at the live performance and recorded for	
8	the Albums.	
9	Martinez Decl. at ¶ 6; Begakis Decl. at	
10	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
11	67. For the final two (of five) Albums	
12	(which are comprised of recordings	
13	from a previous live performance by	
14	the Group), Hyphy also directly	
	employed, supervised, and directed the services of the sound engineer	
15	and videographer who each recorded	
16	the audio and video of the live	
17	performance, respectively.	
18	Martinez Decl. at ¶ 6; Begakis Decl. at	
19	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
20	68. For the final two (of five) Albums	
21	(which are comprised of recordings from a previous live performance by	
22	the Group), Hyphy also wrote a	
23	script for the history of the band as	
24	presented at the live performance, and hired a "MC"/commentator who	
25	narrated the script.	
26	Martinez Decl. at ¶ 6; Begakis Decl. at	
27	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
28	at 13.0-23.	

2 and Supporting Evidence: Supporting Eviden 69. For the final two (of five) Albums (which are comprised of recordings from a previous live performance by	ce:
69. For the final two (of five) Albums (which are comprised of recordings	
(which are comprised of recordings	
4 from a previous live performance by	
the Group), Hyphy also re-recorded whole portions of the guitarist's	
6 contributions to the live performance	
afterwards, using a new guitarist	
selected, hired and paid for by	
8 Hyphy.	
9 Martinez Decl. at ¶ 6; Begakis Decl. at	
10 \ \{ \} 8, Exhibit "G" thereto, Martinez Depo	
at 75:6-25.	
70. It should be noted here that Flores	
and Vargas were plainly joint	
authors of the Albums, including based on the fact that Flores and	
Vargas were equally involved in all	
activities of the Band, which existed	
as an unincorporated partnership in	
which all Band members were joint	
owners, participants and contributors.	
18	
Begakis Decl. at ¶ 13, Exhibit "L"	
thereto, Chavez Depo I at 18:23-19:3;	
Begakis Decl. at ¶ 11, Exhibit "J"	
thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20,	
22 143:25-144:3, 144:4-7; Begakis Decl. at	
¶ 12, Exhibit "K" thereto, Flores Depo	
at 47:15-25, 82:13-15, 82:22-83:2, 83:4-	
24 13, 85:25-86:11, 86:13-21.	
71. It should be noted here that Flores	
and Vargas were plainly joint authors of the Albums, including	
based on the fact that Flores and	
Vargas were equally credited on all	

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porting Evidence: Which each of them made is. ecl. at ¶ 11, Exhibit "J" Depo at 27:17-22, 14-16, 143:17-20, 144:4-7; Begakis Decl. at K" thereto, Flores Depo	Supporting Evidence:
s. ecl. at ¶ 11, Exhibit "J" Depo at 27:17-22, 14-16, 143:17-20, 144:4-7; Begakis Decl. at	
ecl. at ¶ 11, Exhibit "J" Depo at 27:17-22, 14-16, 143:17-20, 144:4-7; Begakis Decl. at	
Depo at 27:17-22, 14-16, 143:17-20, 144:4-7; Begakis Decl. at	
Depo at 27:17-22, 14-16, 143:17-20, 144:4-7; Begakis Decl. at	
144:4-7; Begakis Decl. at	
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s receipt of all such	
nt¶14, Exhibit "M"	
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:3, 144:4-7; Begakis	
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n Artwork").	
	K" thereto, Flores Depo :13-15, 82:22-83:2, 83:4- 1, 86:13-21. noted here that Flores were plainly joint ne Albums, including e fact that Flores and ed equally in all profits and were granted equal expect all records related expect all records related expect all such at ¶ 14, Exhibit "M" at Depo II at 20:20-21:16, -16, 33:18-34:1, 38:8-18, gakis Decl. at ¶ 11, reto, Vargas Depo at 7-10, 143:14-16, 143:1713, 144:4-7; Begakis exhibit "K" thereto, 47:15-25, 82:13-15, -14-13, 85:25-86:11, to its original creative ns to the production, nd overall creation of the ales Albums, Hyphy also nd created the artwork the cover of each Album an Artwork").

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 7; Begakis Decl. at	
4	¶ 8, Exhibit "G" thereto, Martinez Depo	
5	at 127:12-21. 74. Hyphy released the Albums, with	
6	the Album Artwork, for distribution	
7	through all available digital service	
8	providers (the " <i>DSPs</i> ") between 2013 and 2017.	
9		
10	Martinez Decl. at ¶ 8, Exhibit "B" thereto; Begakis Decl. at ¶ 8, Exhibit	
	"G" thereto, Martinez Depo at 44:7-23;	
11	51:18-25; 67:24-69:5.	
12	75. Thereafter, Hyphy obtained copyright registrations for all of	
13	such Album Artwork.	
14		
15	Martinez Decl. at ¶ 9, Exhibit "C" thereto; Begakis Decl. at ¶ 8, Exhibit	
16	"G" thereto, Martinez Depo at 133:9-	
17	136:5.	
18	76. Yellowcake is a competing record label and distributor of sound	
19	recordings, utilizing Colonize as its	
20	"distribution arm" to release and exploit rights that Yellowcake	
21	acquires.	
22	_	
	Begakis Decl. at ¶ 9, Exhibit "H" thereto, Deposition Transcript of Kevin	
23	Berger ("Berger Depo") at 91:19-23;	
24	Begakis Decl. at ¶ 10, Exhibit "I"	
25	thereto, Deposition Transcript of Jose David Hernandez, Volume I	
26	("Hernandez Depo I") at 77:19-21.	
27	77. Hernandez is a co-owner of both	
28	Yellowcake and Colonize.	

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Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
Begakis Decl. at ¶ 10, Exhibit "I"	
thereto, Hernandez Depo I at 51:9-11,	
116:18-117:14.	
78. In his position as co-owner of both	
Yellowcake and Colonize,	
Hernandez has admitted that both	
entities have operated – and	
continue to operate – as one single	
economic entity, with common	
ownership, common business	
operations, common office space,	
common staff, and many other	
common resources.	
Decelvic Deal at ¶ 10. Evaluit it 112	
Begakis Decl. at ¶ 10, Exhibit "I"	
thereto, Hernandez Depo I at 80:3-20.	
79. In or about March 2019, Hernandez approached Chavez about selling	
the Los Originales Albums to	
Yellowcake.	
T eno weake.	
Begakis Decl. at ¶ 14, Exhibit "M"	
thereto, Chavez Depo II at 77:13-17,	
79:7-9, 79:17-80:2, 81:7-16; Begakis	
Decl. at ¶ 10, Exhibit "I" thereto,	
Hernandez Depo I at 148:24-149:5.	
80. Hernandez had previously worked	
with Hyphy and had secretly gained	
valuable information on Hyphy's	
business and relationship with	
Chavez. Hernandez therefor knew	
that Hyphy only had an oral	
agreement with the Group.	
Martinez Decl. at ¶ 3; Begakis Decl. at	
¶ 8, Exhibit "G" thereto, Martinez Depo	
at 26:2-12.	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	81. Hernandez approached and	
	convinced Chavez, without Hyphy	
4	or the rest of the Group's knowledge, to assign the Albums to	
5	Yellowcake in exchange for	
6	payment of \$500,000.	
7		
8	Begakis Decl. at ¶ 14, Exhibit "M" thereto, Chavez Depo II at 77:13-17,	
	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	
9	Begakis Decl. at ¶ 10, Exhibit "I"	
10	thereto, Hernandez Depo I at 107:4-20.	
11	82. Chavez and Yellowcake codified	
12	their purported agreement via an "Asset Purchase and Assignment	
	Agreement" executed on or about	
13	March 21, 2019 (the " <i>Asset</i>	
14	Purchase Agreement").	
15	Begakis Decl. at ¶ 7, Exhibit "F"	
16	thereto, Plaintiff/Counterdefendant's	
17	Document Production (PLF000021-	
	PLF000039).	
18	83. In Section 13.e. of the Asset	
19	Purchase Agreement, Chavez represented and warranted to	
20	Yellowcake that Chavez was "the	
21	only owner of" the Albums, and	
22	possessed "good and marketable	
	title" thereto at the time of sale.	
23	Begakis Decl. at ¶ 7, Exhibit "F"	
24	thereto, Plaintiff/Counterdefendant's	
25	Document Production (PLF00024).	
26	84. Chavez, however, never obtained signed written agreements from	
27	Flores, Vargas or Hyphy acquiring	
	each party's respective	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	contributions to, and rights in, the	
	Albums and sound recordings	
4	embodied thereon.	
5	Begakis Decl. at ¶ 6, Exhibit "E"	
6	thereto, Yellowcake Interrogatory	
7	Responses at pp. 4-5; Begakis Decl. at ¶	
8	7, Exhibit "F" thereto, Yellowcake Responses to Request for Production at	
9	p. 4.	
	85. Since commencing this litigation,	
10	Yellowcake entirely failed to serve	
11	any Initial Disclosures.	
12	Begakis Decl. at ¶ 3.	
13	86. Since commencing this litigation,	
14	Yellowcake has also never claimed	
	that it is entitled to any damages besides alleged actual and punitive	
15	damages.	
16		
17	Begakis Decl. at ¶ 4.	
18	87. Since commencing this litigation, Yellowcake failed to submit any	
19	evidence, whether in discovery or	
	by way of the opinion of any expert	
20	as to what a willing buyer would	
21	pay for the Albums.	
22	Begakis Decl. at ¶ 5.	
23	88. Hyphy has been exploiting each of	
24	the Albums since their respective	
	publication between 2013 and 2017.	
25	See Martinez Decl. at ¶ 8, Exhibit "B"	
26	thereto.	
27	89. Yellowcake did not obtain copyright	
28	registrations in the albums until	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	March of 2020.	
4	Begakis Decl. at ¶ 7, Exhibit "F"	
5	Begakis Decl. at ¶ 7, Exhibit "F" thereto, Plaintiff/Counterdefendant's Document Production (PLF000001-	
6	PLF000021).	

D. <u>Yellowcake's Second Claim for Injunctive Relief Fails Because</u>

<u>Yellowcake's First Claim For Copyright Infringement Fails</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
90. Defendant/Counterclaimant	
HYPHY MUSIC, INC. (" <i>Hyphy</i> ")	
is a record label in the business of	
collaborating with recording artists	
to produce, distribute, and otherwise	
exploit sound and audiovisual	
recordings, coupled with artwork.	
Declaration of John Begakis (" <i>Begakis</i>	
Decl. ") at ¶ 8, Exhibit "G" thereto, Jose	
Martinez Deposition Transcript	
(" <i>Martinez Depo</i> ") at 13:6-14:6.	
91. Counter-Defendant JESUS	
CHAVEZ, SR (" <i>Chavez</i> ") is the	
lead singer of the Spanish-language	
musical group Los Originales De	
San Juan (the " <i>Group</i> ").	
Begakis Decl. at ¶ 13, Exhibit "L"	
thereto, Jesus Chavez, Sr. Deposition,	
Volume I (" <i>Chavez Depo I</i> ") at 25:13-	
14; Begakis Decl. at ¶ 14, Exhibit "M"	
thereto, Jesus Chavez, Sr. Deposition,	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
	Volume II ("Chavez Depo II") at	
3	16:22-17:5.	
4	92. The Group operates as a co-equal	
5	partnership comprised of Chavez	
٦	and fellow band members Domingo	
6	Torres Flores (" <i>Flores</i> "), who plays	
,	the accordion, and Alfonso Vargas	
	(" <i>Vargas</i> "), who plays the drums.	
;	Pagakis Dool at ¶ 12 Eyhihit "I"	
)	Begakis Decl. at ¶ 13, Exhibit "L" thereto, Chavez Depo I at 18:16-19:3,	
,	20:8-16, 21:16-19; Begakis Decl. at ¶	
	11, Exhibit "J" thereto, Deposition	
	Transcript of Alfonso Vargas ("Vargas	
	Depo ") at 17:16-19; 27:17-22; 143:14-	
	16; Begakis Decl. at ¶ 12, Exhibit "K"	
	thereto, Deposition Transcript of	
	Domingo Torres Flores ("Flores	
	Depo ") at 47:15-25, 48:19-23.	
	93. In or about February 2013, Hyphy	
	and the Group began working	
	together to co-create various sound	
	recordings to be embodied on	
	multiple albums, which they orally	
	agreed were to be owned by Hyphy	
	(the "Agreement").	
	Declaration of Jose Martinez	
	("Martinez Decl.") at ¶ 3; Decl. at ¶ 13,	
	Exhibit "L" thereto, Chavez Depo I at	
	34:7-11; Decl. at ¶ 14, Exhibit "M"	
3	thereto, Chavez Depo II at 19:14-17,	
4	32:16-20, 35:12-21.	
5	94. The albums created pursuant to the	
	Agreement were entitled (1)	
5	"Amigos y Contrarios"; (2)	
,	"Corridos de Poca M"; (3) "El	
	Campesino"; (4) "Desde La Cantina	
8		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	de Mi Barrio (En Vivo)"; and (5)	
	"Nuestra Historia (En Vivo)"	
4	(collectively, the "Los Originales Albums" or "Albums").	
5	Atoums of Atoums).	
6	Martinez Decl. at ¶ 4; Begakis Decl. at	
7	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 44:7-23, 51:22-25.	
8	95. One of the other two albums identified in Yellowcake's	
9	Complaint, entitled "Chuy Chavez y	
10	Sus Amigos," has no connection to	
11	this dispute and wasn't even	
12	recorded by Chavez.	
	Martinez Decl. at ¶ 4; Begakis Decl. at	
13	¶ 8, Exhibit "G" thereto, Martinez Depo	
14	at 44:24:-9, 154:11-155:25.	
15	96. Though this Agreement was not	
16	initially memorialized in writing, Flores and Vargas understood that	
	such Agreement existed.	
17		
18	Martinez Decl. at ¶ 5. Declaration of	
19	Domingo Torres Flores ("Flores	
20	Decl. ") at ¶ 3; Declaration of Alfonso Vargas (" Vargas Decl. ") at ¶ 3.	
21	97. Flores and Vargas, as co-equal	
	members of the Group, also	
22	intended that all rights in and to	
23	their recording services rendered pursuant to the Agreement be	
24	conveyed Hyphy.	
25		
	Martinez Decl. at ¶ 4. Flores Decl. at ¶¶	
26	3-5; Vargas Decl. at ¶¶ 3-5.	
27	98. Flores and Vargas also later confirmed their belief and intent to	
28	commined their benef and intent to	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	convey all rights to Hyphy by	
4	executing enforceable Copyright Assignment Agreements on or about	
	March 22, 2022 (collectively, the	
5	"Assignments").	
6	Martinez Decl. at ¶ 5, Exhibit "A"	
7	thereto.	
8	99. Unlike larger record labels,	
9	however, Hyphy closely collaborated with the Group to	
10	create the Albums.	
11		
12	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
13	at 75:6-76:25, 83:11-84:22, 84:24-85:8,	
	85:14-86:16.	
14	100. For the first three (of five) of the Los Originales Albums, Hyphy	
15	helped determine the "theme" and	
16	overall creative direction of each	
17	Album.	
18	Martinez Decl. at ¶ 6.	
19	101. For the first three (of five) of the	
20	Los Originales Albums, Hyphy selected the songs to be included in	
21	each Album.	
22		
	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
23	at 83:11-84:22.	
24	102. For the first three (of five) of the	
25	Los Originales Albums, Hyphy selected the recording studio, and	
26	paid for all costs associated with the	
27	recording of each Album.	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 6.	
	103. For the first three (of five) of the	
4	Los Originales Albums, Hyphy	
5	hired the sound engineer.	
6	Martinez Decl. at ¶ 6; Begakis Decl. at	
7	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 59:21-60:7, 61:10-16.	
8	104. For the first three (of five) of the	
9	Los Originales Albums, Hyphy paid	
10	the Group a substantial amount for recording the Albums.	
	recording the rinduits.	
11	Martinez Decl. at ¶ 6.	
12	105. And for the first three (of five) of	
13	the Los Originales Albums, Hyphy	
14	oversaw and generally supervised	
	the recording and production of each Album.	
15	each Album.	
16	Martinez Decl. at ¶ 6; Begakis Decl. at	
17	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 85:14-86:16.	
18	106. For the final two (of five)	
19	Albums (which are comprised of	
20	recordings from a previous live performance by the Group), Hyphy	
21	also selected and paid for the venue	
	of the live performance.	
22	Martinez Decl. at ¶ 6; Begakis Decl. at	
23	¶ 8, Exhibit "G" thereto, Martinez Depo	
24	at 75:6-25.	
25	107. For the final two (of five)	
26	Albums (which are comprised of	
	recordings from a previous live	
27	performance by the Group), Hyphy also selected the songs to be	
28	also selected the soligs to be	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	performed at the live performance	
	and recorded for the Albums.	
4	Martinez Decl. at ¶ 6; Begakis Decl. at	
5	¶ 8, Exhibit "G" thereto, Martinez Depo	
6	at 75:6-25.	
7	108. For the final two (of five)	
	Albums (which are comprised of	
8	recordings from a previous live performance by the Group), Hyphy	
9	also directly employed, supervised,	
10	and directed the services of the	
11	sound engineer and videographer	
	who each recorded the audio and	
12	video of the live performance,	
13	respectively.	
14	Martinez Decl. at ¶ 6; Begakis Decl. at	
15	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 75:6-25.	
16	109. For the final two (of five)	
17	Albums (which are comprised of recordings from a previous live	
18	performance by the Group), Hyphy	
19	also wrote a script for the history of	
20	the band as presented at the live	
	performance, and hired a "MC"/commentator who narrated	
21	the script.	
22		
23	Martinez Decl. at ¶ 6; Begakis Decl. at	
24	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 75:6-25.	
25	110. For the final two (of five) Albums (which are comprised of	
26	recordings from a previous live	
27	performance by the Group), Hyphy	
28	also re-recorded whole portions of	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	the guitarist's contributions to the	
	live performance afterwards, using a	
4	new guitarist selected, hired and paid for by Hyphy.	
5		
6	Martinez Decl. at ¶ 6; Begakis Decl. at	
7	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
8	111. It should be noted here that	
9	Flores and Vargas were plainly joint	
10	authors of the Albums, including based on the fact that Flores and	
	Vargas were equally involved in all	
11	activities of the Band, which existed	
12	as an unincorporated partnership in	
13	which all Band members were joint owners, participants and	
14	contributors.	
15		
16	Begakis Decl. at ¶ 13, Exhibit "L" thereto, Chavez Depo I at 18:23-19:3;	
17	Begakis Decl. at ¶ 11, Exhibit "J"	
	thereto, Vargas Depo at 27:17-22,	
18	143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at	
19	¶ 12, Exhibit "K" thereto, Flores Depo	
20	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-	
21	13, 85:25-86:11, 86:13-21.	
22	112. It should be noted here that Flores and Vargas were plainly joint	
23	authors of the Albums, including	
	based on the fact that Flores and	
24	Vargas were equally credited on all Albums in which each of them	
25	made contributions.	
26		
27	See Begakis Decl. at ¶ 11, Exhibit "J"	
28	thereto, Vargas Depo at 27:17-22,	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	143:7-10, 143:14-16, 143:17-20,	
3	143:25-144:3, 144:4-7; Begakis Decl. at	
4	¶ 12, Exhibit "K" thereto, Flores Depo	
5	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	
6	113. It should be noted here that	
7	Flores and Vargas were plainly joint authors of the Albums, including	
8	based on the fact that Flores and	
9	Vargas shared equally in all profits	
	of the Band, and were granted equal	
10	access to inspect all records related	
11	to the Band's receipt of all such	
12	profits.	
	Begakis Decl. at ¶ 14, Exhibit "M"	
13	thereto, Chavez Depo II at 20:20-21:16,	
14	26:13-20, 31:8-16, 33:18-34:1, 38:8-18,	
15	41:13-42:2; Begakis Decl. at ¶ 11,	
13	Exhibit "J" thereto, Vargas Depo at	
16	27:17-22, 143:7-10, 143:14-16, 143:17-	
17	20, 143:25-144:3, 144:4-7; Begakis	
18	Decl. at ¶ 12, Exhibit "K" thereto,	
	Flores Depo at 47:15-25, 82:13-15,	
19	82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	
20	114. In addition to its original creative	
21	contributions to the production,	
	recording and overall creation of the	
22	Los Originales Albums, Hyphy also	
23	designed and created the artwork	
24	featured on the cover of each Album	
25	(the "Album Artwork").	
۷۵	Martinez Decl. at ¶ 7; Begakis Decl. at	
26	¶ 8, Exhibit "G" thereto, Martinez Depo	
27	at 127:12-21.	
28	115. Hyphy released the Albums, with	
40		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	the Album Artwork, for distribution	
4	through all available digital service providers (the " <i>DSPs</i> ") between	
5	2013 and 2017.	
6	Martinez Decl. at ¶ 8, Exhibit "B"	
7	thereto; Begakis Decl. at ¶ 8, Exhibit	
	"G" thereto, Martinez Depo at 44:7-23;	
8	51:18-25; 67:24-69:5. 116. Thereafter, Hyphy obtained	
9	copyright registrations for all of	
10	such Album Artwork.	
11	Martinez Decl. at ¶ 9, Exhibit "C"	
12	thereto; Begakis Decl. at ¶ 8, Exhibit	
13	"G" thereto, Martinez Depo at 133:9-136:5.	
14	117. Yellowcake is a competing	
15	record label and distributor of sound recordings, utilizing Colonize as its	
16	"distribution arm" to release and	
17	exploit rights that Yellowcake	
18	acquires.	
19	Begakis Decl. at ¶ 9, Exhibit "H"	
20	thereto, Deposition Transcript of Kevin Berger ("Berger Depo") at 91:19-23;	
21	Begakis Decl. at ¶ 10, Exhibit "I"	
22	thereto, Deposition Transcript of Jose David Hernandez, Volume I	
23	("Hernandez Depo I") at 77:19-21.	
24	118. Hernandez is a co-owner of both	
	Yellowcake and Colonize.	
25	Begakis Decl. at ¶ 10, Exhibit "I"	
26	thereto, Hernandez Depo I at 51:9-11, 116:18-117:14.	
27	110:18-11/:14. 119. In his position as co-owner of	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	both Yellowcake and Colonize,	
	Hernandez has admitted that both	
4	entities have operated – and	
5	continue to operate – as one single economic entity, with common	
6	ownership, common business	
7	operations, common office space,	
	common staff, and many other	
8	common resources.	
9	Begakis Decl. at ¶ 10, Exhibit "I"	
10	thereto, Hernandez Depo I at 80:3-20.	
11	120. In or about March 2019,	
11	Hernandez approached Chavez	
12	about selling the Los Originales	
13	Albums to Yellowcake.	
14	Begakis Decl. at ¶ 14, Exhibit "M"	
	thereto, Chavez Depo II at 77:13-17,	
15	79:7-9, 79:17-80:2, 81:7-16; Begakis	
16	Decl. at ¶ 10, Exhibit "I" thereto,	
17	Hernandez Depo I at 148:24-149:5.	
18	121. Hernandez had previously worked with Hyphy and had	
	secretly gained valuable information	
19	on Hyphy's business and	
20	relationship with Chavez.	
21	Hernandez therefor knew that	
22	Hyphy only had an oral agreement	
	with the Group.	
23	Martinez Decl. at ¶ 3; Begakis Decl. at	
24	¶ 8, Exhibit "G" thereto, Martinez Depo	
25	at 26:2-12.	
26	122. Hernandez approached and	
	convinced Chavez, without Hyphy or the rest of the Group's	
27	knowledge, to assign the Albums to	
28	into titude, to assign the file allie to	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Yellowcake in exchange for	
	payment of \$500,000.	
4	Begakis Decl. at ¶ 14, Exhibit "M"	
5	thereto, Chavez Depo II at 77:13-17,	
6	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	
7	Begakis Decl. at ¶ 10, Exhibit "I"	
	thereto, Hernandez Depo I at 107:4-20.	
8	123. Chavez and Yellowcake codified	
9	their purported agreement via an "Asset Purchase and Assignment	
10	Agreement" executed on or about	
11	March 21, 2019 (the "Asset	
	Purchase Agreement").	
12		
13	Begakis Decl. at ¶ 7, Exhibit "F"	
14	thereto, Plaintiff/Counterdefendant's Document Production (PLF000021-	
	PLF000039).	
15	124. In Section 13.e. of the Asset	
16	Purchase Agreement, Chavez	
17	represented and warranted to	
18	Yellowcake that Chavez was "the	
	only owner of" the Albums, and possessed "good and marketable	
19	title" thereto at the time of sale.	
20		
21	Begakis Decl. at ¶ 7, Exhibit "F"	
22	thereto, Plaintiff/Counterdefendant's	
	Document Production (PLF00024).	
23	125. Chavez, however, never obtained signed written agreements from	
24	Flores, Vargas or Hyphy acquiring	
25	each party's respective	
	contributions to, and rights in, the	
26	Albums and sound recordings	
27	embodied thereon.	
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
2	Begakis Decl. at ¶ 6, Exhibit "E" thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit "F" thereto, Yellowcake Responses to Request for Production at	
3	thereto, Yellowcake Interrogatory	
4	Responses at pp. 4-5; Begakis Decl. at ¶	
5	7, Exhibit "F" thereto, Yellowcake	
3	Responses to Request for Production at	
6	p. 4.	

II. SUMMARY ADJUDICATION IS PROPER AS FOR THE SECOND AND SIXTH COUNTERCLAIMS OF THE COUNTERCLAIM

A. <u>Summary Adjudication Is Proper As To Hyphy's Second</u>

<u>Counterclaim For Copyright Infringement Because Yellowcake</u>

<u>And Colonize Infringed Upon Hyphy's Album Artwork</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
126. Defendant/Counterclaimant	
HYPHY MUSIC, INC. (" <i>Hyphy</i> ")	
is a record label in the business of	
collaborating with recording artists	
to produce, distribute, and otherwise	
exploit sound and audiovisual	
recordings, coupled with artwork.	
Declaration of John Begakis ("Begakis	
Decl. ") at ¶ 8, Exhibit "G" thereto, Jose	
Martinez Deposition Transcript	
(" <i>Martinez Depo</i> ") at 13:6-14:6.	
127. Counter-Defendant JESUS	
CHAVEZ, SR ("Chavez") is the	
lead singer of the Spanish-language	
musical group Los Originales De	
San Juan (the "Group").	
Begakis Decl. at ¶ 13, Exhibit "L"	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	thereto, Jesus Chavez, Sr. Deposition,	
3	Volume I (" <i>Chavez Depo I</i> ") at 25:13-	
1	14; Begakis Decl. at ¶ 14, Exhibit "M"	
;	thereto, Jesus Chavez, Sr. Deposition,	
	Volume II ("Chavez Depo II") at	
	16:22-17:5.	
	128. The Group operates as a co-equal	
	partnership comprised of Chavez and fellow band members Domingo	
	Torres Flores (" <i>Flores</i> "), who plays	
	the accordion, and Alfonso Vargas	
	("Vargas"), who plays the drums.	
	(, wigus), who plays the drains.	
	Begakis Decl. at ¶ 13, Exhibit "L"	
	thereto, Chavez Depo I at 18:16-19:3,	
	20:8-16, 21:16-19; Begakis Decl. at ¶	
	11, Exhibit "J" thereto, Deposition	
	Transcript of Alfonso Vargas ("Vargas	
	Depo ") at 17:16-19; 27:17-22; 143:14-	
	16; Begakis Decl. at ¶ 12, Exhibit "K"	
	thereto, Deposition Transcript of	
	Domingo Torres Flores ("Flores	
	Depo ") at 47:15-25, 48:19-23.	
	129. In or about February 2013,	
	Hyphy and the Group began	
	working together to co-create	
	various sound recordings to be	
	embodied on multiple albums, which they orally agreed were to be	
	owned by Hyphy (the	
	"Agreement").	
	rigitament j.	
	Declaration of Jose Martinez	
	("Martinez Decl.") at ¶ 3; Decl. at ¶ 13,	
	Exhibit "L" thereto, Chavez Depo I at	
	34:7-11; Decl. at ¶ 14, Exhibit "M"	
	thereto, Chavez Depo II at 19:14-17,	
	32:16-20, 35:12-21.	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	130. The albums created pursuant to	
	the Agreement were entitled (1)	
4	"Amigos y Contrarios"; (2) "Corridos de Poca M"; (3) "El	
5	Campesino"; (4) "Desde La Cantina	
6	de Mi Barrio (En Vivo)"; and (5)	
7	"Nuestra Historia (En Vivo)" (collectively, the "Los Originales	
8	Albums" or "Albums").	
9		
	Martinez Decl. at ¶ 4; Begakis Decl. at	
10	¶ 8, Exhibit "G" thereto, Martinez Depo at 44:7-23, 51:22-25.	
11	131. One of the other two albums	
12	identified in Yellowcake's	
13	Complaint, entitled "Chuy Chavez y Sus Amigos," has no connection to	
14	this dispute and wasn't even	
15	recorded by Chavez.	
16	Manting - Dayl at I A. Dayahin Dayl at	
	Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
17	at 44:24:-9, 154:11-155:25.	
18	132. In addition to its original creative	
19	contributions to the production, recording and overall creation of the	
20	Los Originales Albums, Hyphy also	
21	designed and created the artwork	
22	featured on the cover of each Album	
23	(the "Album Artwork").	
	Martinez Decl. at ¶ 7; Begakis Decl. at	
24	¶ 8, Exhibit "G" thereto, Martinez Depo	
25	at 127:12-21. 133. Hyphy released the Albums, with	
26	the Album Artwork, for distribution	
27	through all available digital service	
28	providers (the " DSPs ") between	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	2013 and 2017.	
4	Martinez Decl. at ¶ 8, Exhibit "B"	
	thereto; Begakis Decl. at ¶ 8, Exhibit	
5	"G" thereto, Martinez Depo at 44:7-23;	
6	51:18-25; 67:24-69:5.	
7	134. Thereafter, Hyphy obtained copyright registrations for all of	
8	such Album Artwork.	
9	M .: D 1 . (TO E 1:1:: "C"	
10	Martinez Decl. at ¶ 9, Exhibit "C" thereto; Begakis Decl. at ¶ 8, Exhibit	
11	"G" thereto, Martinez Depo at 133:9-	
	136:5.	
12	135. Yellowcake is a competing record label and distributor of sound	
13	recordings, utilizing Colonize as its	
14	"distribution arm" to release and	
15	exploit rights that Yellowcake	
16	acquires.	
17	Begakis Decl. at ¶ 9, Exhibit "H"	
18	thereto, Deposition Transcript of Kevin	
	Berger (" <i>Berger Depo</i> ") at 91:19-23; Begakis Decl. at ¶ 10, Exhibit "I"	
19	thereto, Deposition Transcript of Jose	
20	David Hernandez, Volume I	
21	("Hernandez Depo I") at 77:19-21.	
22	Yellowcake and Colonize.	
23		
24	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 51:9-11,	
25	116:18-117:14.	
	137. In his position as co-owner of	
26	both Yellowcake and Colonize,	
27	Hernandez has admitted that both entities have operated – and	
28	entities have operated and	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	continue to operate – as one single	
	economic entity, with common	
4	ownership, common business operations, common office space,	
5	common staff, and many other	
6	common resources.	
7		
8	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 80:3-20.	
	138. In or about March 2019,	
9	Hernandez approached Chavez	
10	about selling the Los Originales	
11	Albums to Yellowcake.	
12	Begakis Decl. at ¶ 14, Exhibit "M"	
13	thereto, Chavez Depo II at 77:13-17,	
	79:7-9, 79:17-80:2, 81:7-16; Begakis	
14	Decl. at ¶ 10, Exhibit "I" thereto,	
15	Hernandez Depo I at 148:24-149:5.	
16	139. Hernandez had previously worked with Hyphy and had	
17	secretly gained valuable information	
	on Hyphy's business and	
18	relationship with Chavez.	
19	Hernandez therefor knew that Hyphy only had an oral agreement	
20	with the Group.	
21	-	
22	Martinez Decl. at ¶ 3; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo at 26:2-12.	
23	140. Hernandez approached and	
24	convinced Chavez, without Hyphy	
25	or the rest of the Group's	
26	knowledge, to assign the Albums to	
	Yellowcake in exchange for payment of \$500,000.	
27	payment of \$500,000.	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Begakis Decl. at ¶ 14, Exhibit "M"	
3	thereto, Chavez Depo II at 77:13-17,	
4	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	
5	Begakis Decl. at ¶ 10, Exhibit "I"	
	thereto, Hernandez Depo I at 107:4-20.	
6	141. Chavez and Yellowcake codified	
7	their purported agreement via an "Asset Purchase and Assignment	
8	Agreement" executed on or about	
	March 21, 2019 (the "Asset	
9	Purchase Agreement").	
10		
11	Begakis Decl. at ¶ 7, Exhibit "F"	
	thereto, Plaintiff/Counterdefendant's	
12	Document Production (PLF000021-	
13	PLF000039).	
14	142. Hyphy distributed the Albums with the Album Artwork during all	
	times in which Hyphy believed it	
15	possessed the exclusive right to	
16	distribute the Albums.	
17		
	Martinez Decl. at ¶ 8, Exhibit "B"	
18	thereto; Begakis Decl. at ¶ 8, Exhibit	
19	"G" thereto, Martinez Depo at 67:24-	
20	68:24. 143. Counter-Defendants engaged in	
	the unauthorized distribution of	
21	their own, pirated version of the	
22	Albums with such Album Artwork.	
23		
	Martinez Decl. at ¶ 12, Exhibit "D"	
24	thereto.	
25	144. When first distributed by Hyphy,	
26	each Album was assigned a unique	
	International Standard Recording Code (" <i>ISRC</i> ") and Universal	
27	Product Code (" <i>UPC</i> ").	
28	1100000 0000 (01 0).	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Begakis Decl. at ¶ 15, Exhibit "N"	
4	thereto, Deposition Transcript of	
5	Lawrence H. Katz, Esq. ("Katz Depo") at 68:8-18.	
6	145. It is standard for a new sound	
7	recording placed into the stream of	
8	distribution to be assigned a unique ISRC and UPC.	
9	Begakis Decl. at ¶ 15, Exhibit "N"	
10	thereto, Katz Depo at 46:1-47:4.	
11	146. ISRCs and UPCs are sometimes referred to as "digital social security	
12	numbers" for products, and are used	
13	to track data regarding the	
14	distribution and exploitation of each respective Albums, and the sound	
	recordings thereon.	
15		
16	Begakis Decl. at ¶ 15, Exhibit "N"	
17	thereto, Katz Depo at 46:1-47:4, 46:23-47:4, 47:5-18.	
18	147. Because ISRCs and UPCs are	
19	used to track data regarding each Album, and all sound recordings	
20	contained thereon, such codes	
21	should not have ever been	
22	duplicated.	
23	Begakis Decl. at ¶ 15, Exhibit "N"	
24	thereto, Katz Depo at 48:23-49:14. 148. Yellowcake should have	
25	requested that Hyphy transfer	
	Albums and their assigned ISRCs	
26	and UPCs to Yellowcake, in the	
27	event Yellowcake actually acquired the Albums lawfully.	
28	ino i nomino tamininy.	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Begakis Decl. at ¶ 15, Exhibit "N"	
4	thereto, Katz Depo at 74:1-22.	
	149. Yellowcake ignored established	
5	industry norms governing how the	
6	Albums should have been	
7	transferred, and instead simply re-	
0	released unauthorized duplicate	
8	(i.e., pirated) versions with the	
9	Album Artwork, and with newly assigned ISRC and UPCs.	
10	assigned isite and of es.	
11	Martinez Decl. at ¶ 11; Begakis Decl. at	
	¶ 15, Exhibit "N" thereto, Katz Depo at	
12	70:23-71:9, 74:1-22, 74:23-75:17.	
13	150. Although Counter-Defendants	
14	later attempted to scrub the internet	
	of their initial, infringing distribution of the Albums, Hyphy	
15	obtained proof of such distribution	
16	via one of the DSPs located at	
17	<daddykoolrecords.com>.</daddykoolrecords.com>	
18	Martinez Decl. at ¶ 12, Exhibit "D"	
19	thereto.	
20	151. With respect to the Album	
	entitled "Corridos de Poca M", Hyphy's originally assigned UPC	
21	Code is 889176663055.	
22	Yellowcake's later-acquired UPC	
23	Code is 758381471406. Yellowcake	
	distributed this Album with	
24	Hyphy's Album Artwork, as	
25	confirmed by the display of such	
26	Album with Hyphy's Album Artwork and Yellowcake's later-	
	acquired UPC Code offered for	
27	download on	
28		

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Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
<daddykoolrecords.com>.</daddykoolrecords.com>	
Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	
and "D" thereto.	
152. With respect to the Album	
entitled "El Campesino", Hyphy's	
originally assigned UPC Code is	
190374798310. Yellowcake's later-	
acquired UPC Code is	
758381471420. Yellowcake	
distributed this Album with	
Hyphy's Album Artwork, as	
confirmed by the display of such	
Album with Hyphy's Album	
Artwork and Yellowcake's later-	
acquired UPC Code offered for	
download on	
<daddykoolrecords.com>.</daddykoolrecords.com>	
Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	
and "D" thereto.	
153. With respect to the Album	
entitled "Desde La Cantina De Mi	
Barrio", Hyphy's originally	
assigned UPC Code is	
191018998417. Yellowcake's later-	
acquired UPC Code is	
758381471413. Yellowcake	
distributed this Album with	
Hyphy's Album Artwork, as	
confirmed by the display of such	
Album with Hyphy's Album	
Artwork and Yellowcake's later-	
acquired UPC Code offered for	
download on	
<daddykoolrecords.com>.</daddykoolrecords.com>	
Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	and "D" thereto.	
	154. Before Counter-Defendants knew	
4	that Hyphy had discovered proof of	
5	their infringement, Hernandez lied	
6	under oath during his deposition as the person most knowledgeable for	
	Colonize by claiming that	
7	Yellowcake and Colonize would	
8	never distribute the Albums with	
9	Hyphy's Album Artwork (even	
	though they had).	
10	Depolvis Deal at ¶ 10. Evaluit it (11)	
11	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 211:24-	
12	212:6.	
13	155. If Counter-Defendants are able to	
	avoid liability for their infringement	
14	of Hyphy's Album Artwork, by	
15	arguing that only Colonize	
16	distributed the Albums, Hyphy will suffer significant injustice by not	
	have any recourse in response to	
17	such wrongdoing.	
18		
19	Martinez Decl. at ¶ 14.	

B. Summary Adjudication Is Proper As To Hyphy's Sixth

Counterclaim For Unfair Competition Because Hyphy Has

Established That Yellowcake And Colonize Engaged In Copyright

Infringement

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
156. Defendant/Counterclaimant	
HYPHY MUSIC, INC. (" <i>Hyphy</i> ")	
is a record label in the business of	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	collaborating with recording artists	
	to produce, distribute, and otherwise	
4	exploit sound and audiovisual	
5	recordings, coupled with artwork.	
6	Declaration of John Begakis ("Begakis	
7	Decl. ") at ¶ 8, Exhibit "G" thereto, Jose	
'	Martinez Deposition Transcript	
8	(" <i>Martinez Depo</i> ") at 13:6-14:6.	
9	157. Counter-Defendant JESUS	
	CHAVEZ, SR (" <i>Chavez</i> ") is the	
10	lead singer of the Spanish-language	
11	musical group Los Originales De	
12	San Juan (the " <i>Group</i> ").	
12	Pagakis Dool at ¶ 12 Eyhihit "I"	
13	Begakis Decl. at ¶ 13, Exhibit "L" thereto, Jesus Chavez, Sr. Deposition,	
14	Volume I (" <i>Chavez Depo I</i> ") at 25:13-	
	14; Begakis Decl. at ¶ 14, Exhibit "M"	
15	thereto, Jesus Chavez, Sr. Deposition,	
16	Volume II ("Chavez Depo II") at	
17	16:22-17:5.	
1 /	158. The Group operates as a co-equal	
18	partnership comprised of Chavez	
19	and fellow band members Domingo	
	Torres Flores (" <i>Flores</i> "), who plays	
20	the accordion, and Alfonso Vargas	
21	(" <i>Vargas</i> "), who plays the drums.	
22	Begakis Decl. at ¶ 13, Exhibit "L"	
23	thereto, Chavez Depo I at 18:16-19:3,	
24	20:8-16, 21:16-19; Begakis Decl. at ¶	
	11, Exhibit "J" thereto, Deposition	
25	Transcript of Alfonso Vargas ("Vargas	
26	Depo ") at 17:16-19; 27:17-22; 143:14-	
	16; Begakis Decl. at ¶ 12, Exhibit "K" thereto, Deposition Transcript of	
27	Domingo Torres Flores ("Flores	
28	Domingo Torres Froites (1 tortes	

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
Depo ") at 47:15-25, 48:19-23	
159. In or about February 2013,	
Hyphy and the Group began	
working together to co-create	
various sound recordings to be	
embodied on multiple albums, which they orally agreed were to be	
owned by Hyphy (the	
"Agreement").	
is come in	
Declaration of Jose Martinez	
(" <i>Martinez Decl.</i> ") at ¶ 3; Decl. at ¶ 13,	
Exhibit "L" thereto, Chavez Depo I at	
34:7-11; Decl. at ¶ 14, Exhibit "M"	
thereto, Chavez Depo II at 19:14-17,	
32:16-20, 35:12-21.	
160. The albums created pursuant to the Agreement were entitled (1)	
"Amigos y Contrarios"; (2)	
"Corridos de Poca M"; (3) "El	
Campesino"; (4) "Desde La Cantina	
de Mi Barrio (En Vivo)"; and (5)	
"Nuestra Historia (En Vivo)"	
(collectively, the "Los Originales	
Albums" or "Albums").	
Martinez Decl. at ¶ 4; Begakis Decl. at	
¶ 8, Exhibit "G" thereto, Martinez Depo	
at 44:7-23, 51:22-25.	
161. One of the other two albums	
identified in Yellowcake's	
Complaint, entitled "Chuy Chavez y	
Sus Amigos," has no connection to	
this dispute and wasn't even recorded by Chavez.	
recorded by Chavez.	
Martinez Decl. at ¶ 4; Begakis Decl. at	
¶ 8, Exhibit "G" thereto, Martinez Depo	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$_{2}\parallel$	and Supporting Evidence:	Supporting Evidence:
3	at 44:24:-9, 154:11-155:25.	
	162. In addition to its original creative	
4	contributions to the production, recording and overall creation of the	
5	Los Originales Albums, Hyphy also	
6	designed and created the artwork	
7	featured on the cover of each Album (the " <i>Album Artwork</i> ").	
8	1	
9	Martinez Decl. at ¶ 7; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
10	at 127:12-21. 163. Hyphy released the Albums, with	
11	the Album Artwork, for distribution	
12	through all available digital service providers (the " DSPs ") between	
13 14	2013 and 2017.	
15	Martinez Decl. at ¶ 8, Exhibit "B"	
16	thereto; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo at 44:7-23;	
17	51:18-25; 67:24-69:5.	
18	164. Thereafter, Hyphy obtained copyright registrations for all of	
19	such Album Artwork.	
20	Martinez Decl. at ¶ 9, Exhibit "C"	
21	thereto; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo at 133:9-	
22	136:5.	
23	165. Yellowcake is a competing	
24	record label and distributor of sound	
	recordings, utilizing Colonize as its "distribution arm" to release and	
2526	exploit rights that Yellowcake acquires.	
27	acquitos.	
28	Begakis Decl. at ¶ 9, Exhibit "H"	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	thereto, Deposition Transcript of Kevin	
	Berger ("Berger Depo") at 91:19-23;	
4	Begakis Decl. at ¶ 10, Exhibit "I"	
5	thereto, Deposition Transcript of Jose	
6	David Hernandez, Volume I (" <i>Hernandez Depo I</i> ") at 77:19-21.	
	166. Hernandez is a co-owner of both	
7	Yellowcake and Colonize.	
8		
9	Begakis Decl. at ¶ 10, Exhibit "I"	
	thereto, Hernandez Depo I at 51:9-11,	
10	116:18-117:14.	
11	167. In his position as co-owner of	
12	both Yellowcake and Colonize, Hernandez has admitted that both	
	entities have operated – and	
13	continue to operate – as one single	
14	economic entity, with common	
15	ownership, common business	
	operations, common office space,	
16	common staff, and many other	
17	common resources.	
18	Begakis Decl. at ¶ 10, Exhibit "I"	
19	thereto, Hernandez Depo I at 80:3-20.	
19	168. In or about March 2019,	
20	Hernandez approached Chavez	
21	about selling the Los Originales	
22	Albums to Yellowcake.	
	Begakis Decl. at ¶ 14, Exhibit "M"	
23	thereto, Chavez Depo II at 77:13-17,	
24	79:7-9, 79:17-80:2, 81:7-16; Begakis	
25	Decl. at ¶ 10, Exhibit "I" thereto,	
	Hernandez Depo I at 148:24-149:5.	
26	169. Hernandez had previously	
27	worked with Hyphy and had	
28	secretly gained valuable information	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	on Hyphy's business and	
	relationship with Chavez.	
4	Hernandez therefor knew that	
5	Hyphy only had an oral agreement with the Group.	
6	with the Group.	
7	Martinez Decl. at ¶ 3; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo	
8	at 26:2-12.	
9	170. Hernandez approached and convinced Chavez, without Hyphy	
10	or the rest of the Group's	
	knowledge, to assign the Albums to	
11	Yellowcake in exchange for	
12	payment of \$500,000.	
13	D 1-i- D - 1 - 4 ¶ 14 E1-i1-i4 (N 12)	
14	Begakis Decl. at ¶ 14, Exhibit "M" thereto, Chavez Depo II at 77:13-17,	
	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	
15	Begakis Decl. at ¶ 10, Exhibit "I"	
16	thereto, Hernandez Depo I at 107:4-20.	
17	171. Chavez and Yellowcake codified	
18	their purported agreement via an	
	"Asset Purchase and Assignment Agreement" executed on or about	
19	March 21, 2019 (the "Asset"	
20	Purchase Agreement').	
21		
22	Begakis Decl. at ¶ 7, Exhibit "F"	
	thereto, Plaintiff/Counterdefendant's Document Production (PLF000021-	
23	PLF000039).	
24	172. Hyphy distributed the Albums	
25	with the Album Artwork during all	
26	times in which Hyphy believed it	
	possessed the exclusive right to distribute the Albums.	
27	distribute the Albums.	
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 8, Exhibit "B"	
	thereto; Begakis Decl. at ¶ 8, Exhibit	
4	"G" thereto, Martinez Depo at 67:24-	
5	68:24. 173. Counter-Defendants engaged in	
6	the unauthorized distribution of	
7	their own, pirated version of the	
	Albums with such Album Artwork.	
8	M-4: D-1 -4 ¶ 12 E-1:1:4 (5D)?	
9	Martinez Decl. at ¶ 12, Exhibit "D" thereto.	
10	174. When first distributed by Hyphy,	
11	each Album was assigned a unique	
12	International Standard Recording	
	Code (" <i>ISRC</i> ") and Universal Product Code (" <i>UPC</i> ").	
13	Troduct code (CT C).	
14	Begakis Decl. at ¶ 15, Exhibit "N"	
15	thereto, Deposition Transcript of	
16	Lawrence H. Katz, Esq. (" <i>Katz Depo</i> ") at 68:8-18.	
17	175. It is standard for a new sound	
	recording placed into the stream of	
18	distribution to be assigned a unique	
19	ISRC and UPC.	
20	Begakis Decl. at ¶ 15, Exhibit "N"	
21	thereto, Katz Depo at 46:1-47:4.	
	176. ISRCs and UPCs are sometimes	
22	referred to as "digital social security	
23	numbers" for products, and are used to track data regarding the	
24	distribution and exploitation of each	
25	respective Albums, and the sound	
26	recordings thereon.	
27	Begakis Decl. at ¶ 15, Exhibit "N"	
28	thereto, Katz Depo at 46:1-47:4, 46:23-	

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Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
47:4, 47:5-18.	
177. Because ISRCs and UPCs are	
used to track data regarding each	
Album, and all sound recordings	
contained thereon, such codes	
should not have ever been	
duplicated.	
Begakis Decl. at ¶ 15, Exhibit "N"	
thereto, Katz Depo at 48:23-49:14.	
178. Yellowcake should have	
requested that Hyphy transfer	
Albums and their assigned ISRCs	
and UPCs to Yellowcake, in the	
event Yellowcake actually acquired	
the Albums lawfully.	
Begakis Decl. at ¶ 15, Exhibit "N"	
thereto, Katz Depo at 74:1-22.	
179. Yellowcake ignored established	
industry norms governing how the	
Albums should have been	
transferred, and instead simply re-	
released unauthorized duplicate	
(i.e., pirated) versions with the	
Album Artwork, and with newly	
assigned ISRC and UPCs.	
Martinez Decl. at ¶ 11; Begakis Decl. at	
¶ 15, Exhibit "N" thereto, Katz Depo at	
70:23-71:9, 74:1-22, 74:23-75:17.	
180. Although Counter-Defendants	
later attempted to scrub the internet	
of their initial, infringing	
distribution of the Albums, Hyphy obtained proof of such distribution	
via one of the DSPs located at	
daddykoolrecords.com .	
addinooneonus.	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 12, Exhibit "D"	
4	thereto.	
	181. With respect to the Album	
5	entitled "Corridos de Poca M",	
6	Hyphy's originally assigned UPC	
7	Code is 889176663055.	
	Yellowcake's later-acquired UPC	
8	Code is 758381471406. Yellowcake	
9	distributed this Album with	
10	Hyphy's Album Artwork, as confirmed by the display of such	
	Album with Hyphy's Album	
11	Artwork and Yellowcake's later-	
12	acquired UPC Code offered for	
13	download on	
	<daddykoolrecords.com>.</daddykoolrecords.com>	
14	Martiner Deal at III 9 12 Eulihita "D"	
15	Martinez Decl. at ¶¶ 8, 12, Exhibits "B" and "D" thereto.	
16	182. With respect to the Album	
17	entitled "El Campesino", Hyphy's	
	originally assigned UPC Code is	
18	190374798310. Yellowcake's later-	
19	acquired UPC Code is	
20	758381471420. Yellowcake distributed this Album with	
	Hyphy's Album Artwork, as	
21	confirmed by the display of such	
22	Album with Hyphy's Album	
23	Artwork and Yellowcake's later-	
	acquired UPC Code offered for	
24	download on	
25	<daddykoolrecords.com>.</daddykoolrecords.com>	
26	Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	
27	and "D" thereto.	
	183. With respect to the Album	
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	entitled "Desde La Cantina De Mi	
3	Barrio", Hyphy's originally	
4	assigned UPC Code is	
5	191018998417. Yellowcake's later-	
	acquired UPC Code is	
6	758381471413. Yellowcake distributed this Album with	
7	Hyphy's Album Artwork, as	
8	confirmed by the display of such	
	Album with Hyphy's Album	
9	Artwork and Yellowcake's later-	
10	acquired UPC Code offered for	
11	download on	
	<daddykoolrecords.com>.</daddykoolrecords.com>	
12	M-4: D-1 -4 (10 0 10 E-1:1:4- (4D2)	
13	Martinez Decl. at ¶¶ 8, 12, Exhibits "B" and "D" thereto.	
14	184. Before Counter-Defendants knew	
	that Hyphy had discovered proof of	
15	their infringement, Hernandez lied	
16	under oath during his deposition as	
17	the person most knowledgeable for	
	Colonize by claiming that	
18	Yellowcake and Colonize would	
19	never distribute the Albums with	
20	Hyphy's Album Artwork (even	
	though they had).	
21	Begakis Decl. at ¶ 10, Exhibit "I"	
22	thereto, Hernandez Depo I at 211:24-	
23	212:6.	
	185. If Counter-Defendants are able to	
24	avoid liability for their infringement	
25	of Hyphy's Album Artwork, by	
26	arguing that only Colonize	
	distributed the Albums, Hyphy will	
27	suffer significant injustice by not have any recourse in response to	
28	have any recourse in response to	

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Hyphy's Undisputed Mater	rial Facts Opposing Party's Response ar	Opposing Party's Response and
and Supporting Evide	<u>Supporting Evidence:</u>	
such wrongdoing.		
Martinez Decl. at ¶ 14.		
DATED: May 19, 2023	ALTVIEW LAW GROUP, LLP	
	1 -11 2/-	
	By:	
	JOHN M. BEGAKIS Attorneys for Defendant/Counterclaiman HYPHY MUSIC, INC., a California	ıt
	HYPHY-MUSIC, INC., a California corporation	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a "Notice of Electronic Filing" automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: May 19, 2023 By: <u>/s/ John Begakis</u>

John M. Begakis